

EXHIBIT A: MDM DECLARATION

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

XOOM ENERGY, LLC and XOOM ENERGY
NEW YORK, LLC,

Defendants.

No. 18 Civ. 2949 (ARR) (RER)

**DECLARATION OF MICHAEL D. MATTHEWS, JR. IN SUPPORT OF
DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Michael D. Matthews, Jr., under penalty of perjury, declares as follows:

1. I am a partner of the law firm McDowell Hetherington LLP, attorneys for Defendants XOOM Energy, LLC and XOOM Energy New York, LLC. I submit this Declaration in support of Defendants' Response in Opposition to Plaintiffs' Motion for Class Certification.
2. The following exhibits attached hereto are true and correct copies of David C. Coleman's expert reports:

Exhibit A-1 Expert Report of David C. Coleman dated October 31, 2022.

Exhibit A-2 Rebuttal Expert Report of David C. Coleman dated November 4, 2022.

3. The following exhibit attached hereto is a true and correct copy of a document filed in *Bell v. Gateway Energy Servs. Corp.*, No. 31168/2018 (Rockland Cnty. Super. Ct. Sep. 13, 2018):

Exhibit A-3 NYSCEF Doc. No. 45, Decision & Order dated September 13, 2018.

4. The following exhibit attached hereto is a true and correct copy of a document filed in *In the Matter of State-Wide Energy Services Company Referral Programs*, Case 05-M-0858 and *In the Matter of Central Hudson Gas & Electric Corporation's Plan to Foster the Development of Retail Energy Markets*:

Exhibit A-4 Order Adopting ESCO Referral Program Guidelines and Approving an ESCO Referral Program Subject to Modifications dated December 22, 2005

5. The following exhibit attached hereto is a true and correct copy of relevant excerpts from the transcripts of a motion to compel hearing in this case:

Exhibit A-5 Transcript of Civil Cause for Video Motion Hearing before The Honorable Ramon E. Reyes, Jr. dated August 27, 2020.

6. The following exhibits attached hereto are true and correct copies of relevant excerpts from the transcripts of depositions taken in this case:

Exhibit A-6 Deposition of Boris Mirkin dated August 30, 2022.

Exhibit A-7 Deposition of Susanna Mirkin dated August 30, 2022.

Exhibit A-8 Deposition of Jason Loehde, individually, dated July 27, 2022.

Exhibit A-9 Deposition of XOOM Corporate Representative Jason Loehde dated July 28, 2022.

Exhibit A-10 Deposition of Ryan Park dated July 22, 2022.

Exhibit A-11 Deposition of Andrew Coppola dated May 11, 2022.

Exhibit A-12 Deposition of Thomas L. Ulry dated May 12, 2022.

Exhibit A-13 Deposition of Troy Chidester dated June 24, 2022.

Exhibit A-14 Deposition of Seabron Adamson dated November 8, 2022.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 3, 2023.



Michael D. Matthews, Jr., Esq.